

GEORGIA AND FLORIDA.

RESOLUTIONS AND DOCUMENTS

RELATING TO

THE BOUNDARY LINE

BETWEEN THE STATE OF GEORGIA

AND THE

TERRITORY OF FLORIDA.

JANUARY 28, 1828.

Referred to the Committee on the Judiciary.

WASHINGTON :

PRINTED BY GALES & SEATON.

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WASHINGTON

JOHN D. BROWN, PRINTER

EXECUTIVE OFFICE, TALLAHASSEE,

January 7th, 1828.

SIR : In compliance with a resolution of the Legislative Council, I herewith transmit to you the report of "the Select Committee to whom was referred so much of the Message of the Acting Governor, as relates to the contested question of boundary between the State of Georgia and the Territory of Florida," and ask, in the language of that resolution, your "immediate attention to the same."

I am, sir, very respectfully,

Your obedient servant,

JWM. M. McCARTY,

Acting Governor of Florida.

Hon. Jos. M. WHITE, *Washington City.*

The Select Committee to whom was referred so much of the Message of the Acting Governor, as relates to the contested question of boundary between the State of Georgia and the Territory of Florida, beg leave to report :

That the great importance and delicacy of the question, has induced them to give to it the highest consideration, and to bring into bearing all the points which, in their estimation, were essential to a true statement of the causes of difference existing between the two Governments. Looking with anxious eyes to the prosperity of the Territory, and to the future stand she seemed destined to take as a member of this great political family, they have witnessed, with pain, an attempt to deprive her of a most valuable portion of her population and her soil ; and, in so doing, at once to prostrate the fairest hopes of her most ardent admirers, and continue her in her present territorial condition. Forming the extreme Southern link in the chain of the American States, and possessing all the advantages which must necessarily flow from her commercial position, superadded to the richness and fertility of her soil, the genial influence of her climate, and the hardy and adventurous character of her citizens ; they looked with aching hearts, even to the remotest probability of an event so eminently calculated to undo all former efforts in her cause, and place her in a situation to remove all inducements to future exertions. Rapidly assuming a station which has scarcely been the fortunate lot of any one of the Territories of the Union ; while yet in her infancy, she bid fair to ripen into maturity, adorned with every feature calculated to render her an ornament to the Union, and one of the most

valuable members of the body politic. Though these reflections weighed upon the minds of your committee, and had their operating influence, yet the true state of the question has not been abandoned from such considerations. On the contrary, they were the more impelled to exertion, in order to show the invalidity of the claim advanced by the State of Georgia. In this they believe they shall succeed; and, that the matter may be fully understood, they present, in a form as distinct and lucid as their circumstances admit, every thing having a direct relation thereto.

The first intimation of the claim of the State of Georgia to a portion of the lands heretofore acknowledged as the soil of the United States, and sold as such to private individuals, is found in the message of his Excellency George M. Troup, late Governor of that State to the Legislature, just before his retirement from office. This, to us, most extraordinary claim, is, according to the language of his Excellency, founded upon "the charter of Georgia, the treaty of peace of 1783, the confederation of 1778, the present constitution, the treaty with Spain of 1795, and the constitution of the State of Georgia." While the members of your committee would not allow themselves to treat with disrespect arguments emanating from so respectable a source; yet, so far as the authorities cited are intended to bear upon the question now under consideration, they must be permitted to express an opinion, that a solitary glance at them will be sufficient to show that they afford not a shadow of evidence to support the claim; a claim urged by Georgia, at this late period, to more than two thousand square miles of the lands sold as those of the United States.

Though your committee cannot recognize, as authority, any instrument which was created specially for the benefit of one party, without the concurrence and sanction of others interested in the soil, and having rights equally to be regarded in the establishment of the true boundary line, still, in order to investigate the whole matter in dispute, they will proceed to notice the points presented by his Excellency the Governor of Georgia.

The charter of Georgia, referred to by his Excellency, is of date 1732, and was [granted] by a proclamation from George the 2d of England. By that instrument, the southern boundary of Georgia only extended so far as "the southern stream of a certain other great water, or river, called the Alatomaha." This authority, in itself, is therefore entirely irrelevant, and has no bearing upon the point. But, by a proclamation of George the 3d of England, of date 1762, there was annexed to Georgia "all the lands lying between the rivers Alatomaha and St. Mary's." Accepting this last proclamation, or charter, as authority, your committee might inquire if, by it, Georgia can claim any line farther south than the St. Mary's river? If the proclamation had even stated the head of that river, it could not, for a moment, be contended, that she could have extended her southern line from the head to one of its lateral branches, which might, in its devious course, and in conjunction with other streams, have gone much farther south than the actual head of the St. Mary's river, when, in truth, that river is made the most southern boundary of Georgia.

The treaty of peace, of 1783, is also considered by Governor Troup as giving to Georgia the right of her present claim. This definitive treaty between the United States and Great Britain, in describing the boundaries of the American territories, describes the most southern, as a line from the junction of the Flint and Chatahooche rivers, straight "to the head of the St. Mary's river." The question here turns upon what is the head of St. Mary's river, and, in the solution, we can only be governed by common usage. The St. Mary's river has heretofore been represented as beginning at or near a certain point designated by an artificial land mark, called Ellicot's Mound. Recently, however, another branch or stream has been found emptying into it from a much more southern direction, and the late Governor of Georgia now claims that branch as its head, having discovered that it enlarges the territory of that State beyond what has heretofore been considered as her actual limits. To show that this claim ought not to be regarded, at this late day, notwithstanding the apparent plausibility with which it is urged, let us, for a moment, suppose a case, which, though not known to exist, yet may, and possibly does, exist. In low and flat lands, such as are known to surround the head of the St. Mary's river, ponds and lakes are frequently found connected with each other by streams which are large or small, as the ponds which give rise to them are swollen or depressed by rains or droughts. Suppose this southern branch to be formed by a combination of these streams, as it most probably is, and to be extended by a chain of lakes and ponds across the peninsula to the Gulf of Mexico, would the State of Georgia contend that the line should be run from thence; and, if she did, would that claim be recognized? Surely not: for the obvious reason, that a branch so formed could not be considered as the source of the St. Mary's river. When we speak of the head of a river, we technically mean its source, and not one of its branches, no matter how long. The branch of a river is, properly speaking, a descendant of the main river, not the source: it is the offspring that inherits from the source. If the construction contended for by Governor Troup, be correct, we should no longer look upon the Missouri as a branch of the Mississippi, but should henceforth consider it as the Mississippi itself.

"The Confederation of 1778," cited in the message of the Governor of Georgia, makes not the slightest allusion to the limits of that State, nor does "the present Constitution," by which is meant the Constitution of the United States, allude to it. The reasons which induced his Excellency to refer to these two instruments, are not discovered by your Committee, unless he intended to deduce therefrom an argument, that the rights of Georgia were secured to her at the time she became a member of the common family: if this be the argument, your Committee are by no means disposed to deny its correctness: but, while they readily concede that the rights of Georgia should be protected, they must contend, that the rights of others should be regarded as equally sacred.

After an examination into all the authorities referred to by his

Excellency of Georgia, your Committee have been able to find nothing in any of them, which comes directly to the point in question, except in the second and third articles of "the treaty with Spain of 1795." This was "a treaty of friendship, limits, and navigation," between the United States and the Spanish Government; and the boundary line between Florida, then a part of the territory of Spain, and the State of Georgia, one of the United States, is therein described as a line drawn from the junction of the Flint and Chatahooche, "straight to the head of the St. Mary's river," employing the same language that was used in the Treaty of Peace of 1783. To prevent any future misunderstanding, as to the true head of the St. Mary's, and to ascertain it, and definitively settle the line of demarcation, it is provided, in the third article of that treaty, that, "in order to carry the preceding article into effect, one Commissioner, and one Surveyor, shall be appointed by each of the contracting parties, who shall meet at Natchez, on the left side of the river Mississippi, before the expiration of six months from the ratification of this Convention; and they shall proceed to run and mark this boundary, according to the stipulations of the said article. They shall make plats, and keep journals of their proceedings, which shall be considered as part of this Convention, and shall have the same force, as if they were inserted therein." The Commissioners were appointed, in pursuance of this treaty, to run the line; and the one on the part of the United States, published his journal, at large, in the year 1803. This journal, therefore, has the same effect as if it were a part of the Convention and "inserted therein;" and, by it, the head or source of the St. Mary's river is ascertained to be near the point called Ellicot's Mound. Here then was a compact, solemnly made and entered into, and as solemnly ratified by the Senate of the United States, in which body Georgia was represented, and of which her Senators composed a part. Will it then be believed that Georgia can, in law, (viewing her as one of the parties to this compact,) successfully assert a claim to the lands farther south, than the point agreed upon by the Commissioners appointed under this treaty? Suppose that the Crown of Spain had continued in possession of Florida, would the Government of the United States have permitted that possession to be disturbed by such a claim as is here presented, in violation of the faith she plighted in making this compact, and of the sacred obligations which it imposes? To this your Committee believe there can be but one answer; and if the line between Florida and Georgia, could not have been changed, had Florida continued a Spanish province, the same reason must operate, to prevent the change under her present circumstances. Previous to the treaty of 1795, a question of boundary would have been a legitimate subject of investigation; but, after a solemn determination of it by treaty, it is, and must be, at rest. A treaty is the paramount law, and can never be violated, without a departure from those principles which Governments should ever cherish, and observe in their intercourse with each other.

There is another point of view in which this question may be pre-

sented, and which, in the estimation of your Committee, must put it at rest.

Thirty-three years ago the State of Georgia looked quietly on, when, according to the estimation of Governor Troup, two thousand square miles of her territory, by a solemn act, were given to a foreign Power, and she was silent; at the same time, her Senators in Congress, instead of interposing her claim, consented to the transfer, and ratified the act. Her Representatives, ever on the alert, and ready to sound the alarm, at the slightest approach towards an invasion of her soil and her limits, on this occasion, not only neglected to assert her rights, but confirmed the contract, so far as Georgia could do it, by voting for the necessary appropriations to carry this treaty into effect. Upon a more recent occasion, under similar circumstances, Georgia has pursued the same course: by the treaty of 1819, the Government of Spain sold to the Government of the United States the Territory of Florida, embracing the land now the subject of controversy, and Georgia still remained silent; her Senators joined in the ratification of the treaty, and still interposed no claim; her Representatives voted away the money of the United States, to carry this treaty into effect, and still asserted none of the violated rights of Georgia; and yet, we are told, this claim has its foundation in her charter.

The only remaining document referred to by his Excellency is "the Constitution of Georgia." Could this instrument, in the estimation of your Committee, be regarded as evidence in the settlement of this controversy, it would produce no change in its character, because it employs the identical expressions used in the Treaty of Peace of 1783, and the treaty with Spain of 1795, to wit: "the head of the St. Mary's river." Your Committee would however remark that his Excellency John Forsyth, the present Governor of Georgia, in a communication made by him to the Legislature of that State, since the message of Governor Troup, refers as authority to an act of the Provincial Assembly of Georgia, of date 1765, to shew that the lands embraced in the King's proclamation of 1763, were laid out into parishes, and that the most southern parish was declared to be bounded on the Florida side by the most southern branch of the St. Mary's river, and by a line running due west from the head of that river. Did this testimony, so recently discovered by his present Excellency of Georgia, afford any cause for alarm, your Committee believe, that they could avoid its effects, by protesting against its employment: for there is no position more easily sustained, in the estimation of your Committee, than the one which objects to a party's making testimony, to be used in a controversy against his adversary; but, as your Committee believe that no injury can result from the use of this document, they will proceed to an examination of its merits. The most southern branch of the St. Mary's river is declared to be the boundary of the southern parish of Georgia, and by adverting to the maps, upon which that river is marked, it will be seen that it divides itself into two branches, not far above its mouth, and by which it discharges itself into the Cumberland Sound: the southern branch here, is unquestionably the one alluded to in the

act of the Provincial Assembly, and to which, it is highly probable the claims of Georgia will never be contested ; the remaining part of that act, which mentions a line running due west, from the head of that river, clearly establishes the incorrectness of the position contended for by their Excellencies, and is, in this controversy, a most valuable document for Florida. All the authorities to which a reference has been made, concur in naming "the junction of the Flint and Chatahooche," as the point at which this line must commence, and "the head of the St. Mary's river," as the one at which it must stop ; it follows, therefore, that, if this boundary can be ascertained by a line running due west from "the head of St. Mary's," it would be equally ascertained by a line running due east from "the junction of the Flint and Chatahooche;" and by an examination of the map, it will be seen, that a line running due east from the junction of those rivers, would pass to the north of Ellicott's Mound.

Receiving this act of the Provincial Assembly of Georgia as evidence of the true boundary of that State, your committee cannot perceive by what right she now claims the southern branch of the St. Mary's as the point from which this line should be run. The southern branch is known to be many miles south of Ellicott's Mound ; and the true line, according to the evidence adduced by Governor Forsyth, is to the north of that mound. If a line were run due west from the head of the southern branch of the St. Mary's, instead of intersecting the Appalachicola at the junction of the Flint and Chatahooche, as it is required to do, it would be found to cross that river at least forty miles lower down. This argument, deduced, as it is, from testimony furnished by Governor Forsyth, is, in the opinion of your committee, conclusive upon the subject.

Your committee have thus examined all the documents upon which the late and present Governors of Georgia seem to rely as authority ; and they flatter themselves that, while they have derogated nothing from that State, they have given to them such construction and explanations as they are properly entitled to bear. More, much more, could be adduced, to shew the fallacy of this claim. If taken in an equitable point of view, it would exhibit, in stronger colors, the right of the United States to hold and exercise jurisdiction over the soil in dispute. A treaty was formed, expressly settling this boundary ; the State of Georgia acquiesced in it ; and, for thirty-three years, she never pretended to dispute it. But, so soon as a country, then almost unknown, uninhabited but by the savage, became an object of interest, and teemed with civilization and wealth, a spurious claim is advanced, and earnestly contended for. No matter what may have been the rights of Georgia anterior to the treaty of 1795, they cannot now be asserted to any lands within the Territory of Florida : they are barred by her acquiescence and forbearance. Your committee cannot believe that an instance can be found in the history of nations, where a treaty has been made and ratified, and, after so great a lapse of time, one of the parties has been permitted to rescind it, upon the ground that injustice has been done. To shew, further, the entire acquiescence of the

State of Georgia to the treaty of 1795, your committee would call the attention of the Council to an act of Congress, approved the 4th of May, 1826, to authorize the President to run and mark a line dividing the Territory of Florida from the State of Georgia. It will be recollected that, in consequence of the hostility of the Indian tribes, the commissioners, under the treaty with Spain, only settled the point, designating the head of St. Mary's river, and from which the line should be run; and it was to consummate the work, that this act was passed. It is provided therein, that "the line to be run and marked shall be run straight from the junction of said Flint and Chatahooche rivers to the point designated as the head of the St. Mary's river, by the commissioners appointed under the third article of the treaty of friendship, limits, and navigation, between the United States of America and the King of Spain, made at St. Lorenzo el Real, on the seven-and-twentieth day of October, 1795." Here it is seen that the delegation from Georgia, representing the right and interests of that State in both Houses of Congress, so late as the year 1826, sanctioned an act which recognizes, as the true designation of the head of "St. Mary's river," the point agreed on by the commissioners.

Your committee, having concluded the duty with which they were charged, cannot close their report without an expression of their most anxious wishes, that this question should be speedily and honorably adjusted; and that some measures should be adopted for the furtherance of that desirable object. The emigration which has been rapidly flowing into this territory, and much of which has settled upon the lands now claimed by the State of Georgia, induced a belief that we should soon be received as a member of the confederacy, and it was looked upon as the consummation of our political happiness; but the agitation of this question may have the effect of retarding its progress; and if these lands are wrested from our jurisdiction, our political prospects are blasted forever. Florida will then present to disfranchised Europe the singular spectacle of a part of the American Republic inhumanly partitioned among her neighbors, and, instead of being permitted to form a separate and distinct State sovereignty, to disseminate republican principles, and encourage its votaries in every portion of the globe, she was prostrated at the shrine of an ambitious neighbor.

Under these views, the Committee recommend the adoption of the following resolutions:

Resolved, That our Delegate in Congress be respectfully requested to urge an immediate adjustment of the differences, and to procure, if possible, an order that the boundary line shall be run and marked out in such a direction as shall be in accordance with law, and shall promote the ends of justice.

Resolved, further, That his Excellency the Governor be requested to address a copy of the above report and resolution to the Delegate, and ask his immediate attention to the same.

Unanimously adopted, January 1, 1828.

JN. L. DOGGETT,

President of the Legislative Council.

A. BELLAMY, Clerk.

Copy of a letter from the Delegate from Florida.

To the CHAIRMAN of the

Judiciary Committee of the Senate :

SIR : The question submitted for the consideration of Congress, in relation to the boundary line between Georgia and Florida, is one that might have been anticipated from the documents communicated from the War Department at the commencement of the session. I did hope, that, before the adjournment of the Legislature of Georgia, a different view would have been taken, and direction given to this matter. It has, however, been pressed by a resolution of that body, and several Executive communications from the Governor of that State, which have at length coerced its presentation by the President of the United States, to both Houses of Congress, accompanied by the ex parte view taken of it by them.

Being thus presented, it becomes a controversy of some magnitude, both in reference to the amount of property, and the principles involved in its decision. The United States are nominally one party, and the State of Georgia the other. It cannot escape observation, however, that the Territory of Florida, the best interests and future hopes of which depend upon the issue, feels an immediate and vital concern in its decision. I contend that Georgia and the United States are not the only parties really and substantially interested in the question of sovereignty.

The treaty with Spain, of 22d February, 1819, contains a provision which was intended for the benefit of the ceded provinces ; it is that which provides for their incorporation into the Union, as soon as possible, consistent with the principles of the Federal Constitution. I admit it is difficult to give a construction to this article entirely satisfactory ; but I think the expression "incorporation into the Union," is evidently intended, not to apply to the individual inhabitants, by giving them only the privileges of American citizens ; but to the Territory they inhabit. Annexation to one of the States, would be a transfer to a different Sovereignty—an incorporation into that State, and not into the Union : such a construction would be a forced one. The more natural idea is, that the sovereignty renounced by Spain was ultimately to be placed in the hands of the People, in the same manner with the territories of the United States, but to remain under the guardianship of the General Government, until the principles of the Constitution would recognize their admission as a State, with all the rights of sovereignty now claimed by Georgia. The admission of Louisiana and Missouri, are practical commentaries on this position. Florida is now a Territory, possessing some of the attributes of sovereignty, and is ultimately, at no distant day, to take her place in the Confederacy. If that period should arrive before the settlement of this question, she will then be the party directly interested in opposition to the pretensions of Georgia : she will stand in the place of Spain, and will have a right to call on the United States to guaranty her limits. When Louisiana was divided into two Territories, it

formed the ground of serious remonstrance, supported by strong reasons: it was said that Louisiana was one entire sovereignty, entitled to become a member of the Union as Louisiana; and again, that, if subdivision was allowable at the pleasure of Congress, their admission might be indefinitely postponed. This reasoning was disregarded, on the strong ground of necessity, and because the creation of two distinct sovereignties, instead of one, was an extension of the advantages stipulated by the treaty. But at this time, no one entertained the absurd idea of annexing parts of Louisiana to the adjoining States, although it might have been very convenient to have done so. The preservation of their municipal laws, was a most important consideration with the People of that Province, and this would not have been accomplished, if they had been annexed to one of the adjoining States. I consider the stipulation of the treaty a most important one, as intended to place the acquired provinces on a footing with the States which declared their independence, and possessing as much right to contend for their boundaries, by reference to treaties, proclamations, and laws, emanating from parties competent to negotiate or legislate, as Georgia, or any other State in the Union. These Provinces were not acquired with a view of obtaining subjects for any of the States; and as to the United States, the genius of our Government forbids it, unless the ten miles square be an exception. If I am mistaken in this view of the subject, I shall at least be excused referring to the position I occupy in relation to the People of Florida, and as a citizen of the United States, for exposing what I consider the groundless pretensions of Georgia to the land in question.

This controversy involves two questions, the one of national law, the other of fact. It is assumed by the Executive of Georgia, that the line agreed upon and fixed by the Commissioners of the United States and Spain, in pursuance of the treaty of limits entered into at San Lorenzo el Real, on the 27th October, 1795, is not the true boundary intended by the charter of Georgia, and the treaty of 1783; but that the head and source of the St. Mary's river, stipulated in these documents, is farther south; which will give to Georgia fifteen hundred thousand acres of land, claimed by the United States, as a portion of the Spanish territory, acquired by the treaty of 22d February, 1819; about eight hundred square miles of which has been sold and patented by the United States, and the money paid into the public Treasury, with the unsuspecting confidence of the right of soil, at the time it was surveyed and sold. Whether this be true or not—which it cannot be expected will be conceded without further investigation; since not only the commission appointed in pursuance of the treaty before mentioned, but a commission constituted by the State of Georgia herself, have pronounced, that, in their opinion, it is not so—there is a previous question to be determined, to wit: Does not the treaty of 1795, the proceedings under it, the consent of Georgia, as a component part of the Union, exercising an unquestionable constitutional power in the negotiation and ratification of a treaty of limits, the acquiescence of the State for twenty-seven years by their Delega-

tion here, and their Executive there, conclude them from setting up this claim at this time? Or, does the charter of the colony, the Constitution of the State, so far exempt them from the operation of this treaty, and their assent to it so formally given, and publicly expressed, as to authorize them to set aside the treaty, and the proceedings under it, and now institute an inquiry as to what is the true source of St. Mary's river? I think Georgia cannot constitutionally or justly assert such a claim, and I trust it will be resisted with a becoming regard for the interests of the United States, and the Territory I have the honor to represent.

The first charter granted to Georgia, was in the 5th year of George II, Anno Domini 1732, which embraced all that part of Carolina lying between the Savannah river on the north, and the Altamaha on the south. In the year 1763, the King, by his royal proclamation, made four new provinces in the country acquired in America, by the definitive treaty of peace, concluded at Paris, on the 10th February of that year. These Provinces were Quebec, Grenada, East and West Florida. In designating the boundaries of East Florida, in that proclamation, the following expression is used; "*from that part of the Apalachicola where the Chatahooche and Flint rivers meet, to the source of the St. Mary's river, and, by the course of the said river, to the Atlantic ocean.*" In this proclamation, there is also a grant in these words: "*We have, also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia, all the lands lying between the rivers Altamaha and St. Mary's.*" It will be perceived from an examination of the foregoing article in the King's proclamation, that the land annexed by it, to the Province of Georgia, south of the river Altamaha, did not extend beyond the source of that river, and that of the St. Mary's. I have not been able to discover any grant, proclamation, or public act, by which the State of Georgia could set up any thing like a legitimate claim, west and south of a line drawn from the head of the river Altamaha to that of the St. Mary's. It appears to me that the Government of the United States can, with much more propriety, annex all the land not included within such a line, and consequently not within the chartered limits of that State, to Florida, than to institute an investigation, at this time, to find a southern creek running into St. Mary's, for the boundary of that State. The commission given to Sir James Wright, on the 20th January, 1764, if it conferred a jurisdiction beyond the proclamation, could not be considered a grant of soil: the one is a law fixing upon certain geographical limits as the boundaries of Provinces; the other, an authority to exercise jurisdiction specified in the grant of power. The commission of Sir James Wright calls for the southern stream of St. Mary's; as this is repugnant to the grant of soil of both the Provinces of Georgia and East Florida, it must be holden, like all commissions containing authority more extensive than the law on which they are founded, *void pro tanto*. This variance can reasonably be accounted for, by a reference to the fact, that, in the first charter to Georgia, the most southern stream of the Altamaha was fixed upon as

the southern limit of the Colony, and the commission to the Governor and Captain General pursued the charter. The second commission, after the annexation by the proclamation before quoted, appears to be a copy of the first, and, in like manner, calls for the most southern branch of the St. Mary's, which does not accord with the proclamation. The Governor of Georgia, in a communication to the Legislature of that State, of 28th November last, speaks of the land annexed to Georgia by the King's proclamation, and the commission of Sir James Wright. It will be perceived that the latter includes more than the former, and that they cannot be connected together as embracing the same territorial extent, and if it be correct that a commission conferring powers more extensive than the law on which it is founded, be void, the argument of course cannot be maintained, and the conclusion to which the Governor conducts us, "that a portion of the land within the limits of Georgia on the Florida frontier, has been surveyed and sold by the United States," is fallacious. A very obvious distinction might here be taken between a proclamation which is notice to all the world, and has the force of law, and a commission which gives jurisdiction, and is of a nature to be regulated by convenience, and may be limited to one, or extended to half a dozen Provinces. If, however, any doubt should remain, from this discrepancy, it is put to rest by the treaty between Great Britain and the United States, of 3d September, 1783: this treaty which fixes the limits of the United States, at the conclusion of the Revolutionary war, directs that our southern boundary shall pursue a line in latitude 31 north of the equator, "to the middle of the river Apalachicola or Chatahooche; thence, along the middle thereof, to its junction with the Flint river; and thence, straight to the head of St. Mary's river." So far, therefore, as any argument has been urged, founded on the charter of Georgia, I feel persuaded that it will be considered as having no force, in opposition to the treaty: it was certainly competent for the Confederacy in concluding a peace, at the termination of the war of Independence, to regulate the boundaries of any of the former Colonies. Contemporaneously with the definitive treaty of peace between the United States and Great Britain, was the cession of East and West Florida by Great Britain to Spain; and the question arose between His Catholic Majesty and our Government, what was the head and source of the St. Mary's river as defined in the charter of Georgia and East Florida, and the treaty of 1783? The binding force of the treaty of 1783, is admitted by Governors Troup and Forsyth, and it is referred to by them: and the treaty of 1795, between Spain and the United States, follows it, almost literally, in the description of the boundaries between the two countries; but these boundaries, excepting where determined by natural objects, required ascertainment by actual survey and demarcation: it was necessary to ascertain the 31st degree of latitude, by astronomical observation, and afterwards to trace the line by actual survey; to accomplish this, was inserted the 3d article of the treaty of 1795. Can it be denied that it was competent to the United States to enter into stipulations with Spain to

carry into effect the treaty of 1783? and does the treaty of 1795 profess to do any thing more? There is no cession of territory; the sole and exclusive object of the treaty of limits was to carry the former treaty into effect: what then has the Constitution of Georgia to do with the question? By relation, the act ascertaining the limits according to the principles adopted in the treaty of 1783, became a part of that treaty. In order to preclude further dispute, and terminate discussion, it was stipulated that the plats and journals of the Commissioners should form a part of the treaty of limits; the line thus practically ascertained, is to be considered as if expressed in that treaty. Without pursuing this course, the treaty of 1783, as regards the limits between Spain and the United States, would have been a dead letter, or at least useless for any practical purpose: both treaties speak of the junction of the Flint and Chatahooche as one point, and the head of the St. Mary's as the other, at which the line was to begin and terminate: the first required no other ascertainment than that of the treaty of 1783; the second required the exercise of judgment and research; there could be no difference of opinion as to the first, but it was not the case as to the last. Like all other rivers, the St. Mary's has many heads, and different opinions might exist as to that most deserving of the name. It was, therefore, necessary to settle the matter by convention and agreement; and, if this were done fairly, and without fraud, it should be, and is, as binding on the parties as if it were inserted in the treaty of 1783. No unfairness is alleged; the interest of the United States prompted their Commissioner to obtain the most advantageous adjustment; and he did not yield in intelligence to that of Spain. The United States had, at this time, no adverse interest to that of Georgia; on the contrary, it was their interest to obtain for that State as much as they could. If the interest of Georgia had been compromised by the fraud of the Commissioner of the United States, I do not say there would be no ground for a claim of indemnity for the injury sustained. But suppose Spain had continued in possession of Florida, and this question had arisen between her and Georgia—the parties would be placed in a singular attitude. Spain would have had just reason to complain, unless guarantied by the United States, in what had solemnly been settled and assured to her. The matter, after having been determined by the proper parties, the only parties competent to determine it, acquiesced in for twenty-seven years; during which time, an examination has been made by a commission constituted by the State of Georgia, and a report made, that this was the head of the river. Upon what principle can this matter be opened, or rather considered as never having been settled? I think it ought to be considered *res adjudicata*, and the maxim "*interet Reipublicæ ut finis litium*" applied; a maxim more important in the disputes of nations than to the controversy of individuals. Suppose Spain had attempted to extend her jurisdiction beyond Ellicot's Mound, should we have not appealed to the ascertainment and decision in pursuance of the treaty of 1795? and would not Georgia have justly complained of the bad faith of Spain, and called down upon her the

curse of Scripture, for attempting to remove her neighbor's land marks?

Justice does not vary with the change of parties. If such pretension would have been unjust on the part of Spain, it would be equally so on the part of the United States, or of Georgia. The necessity of adhering to treaties, when entered into, has been fully and ably urged by Governor Troup on another occasion. If the question would be considered as settled between Spain and the United States, I can see no reason why the subsequent acquisition of Florida should give rise to it again; and if there be any force in the argument that Georgia and the United States are the only parties, as the Delegate of Florida, I solemnly protest against any alteration of the boundaries, without the consent of my constituents.

If there is any grant of authority in the Constitution, unquestionable in its nature, and I had almost said unlimited in its extent, it is the treaty-making power given to the General Government. The safety of the States was amply provided for, by requiring the ratification of the Senate, their immediate representatives. It cannot be expected that such a body would ever advise or consent to any convention that would injure themselves or their States. An encroachment, in one instance, would only be a precedent for its repetition in another; and the first blow would strike a nerve which would agitate the body politic in all its parts. The United States did not profess to cede any portion of Georgia, but to have its limits ascertained. The State of Georgia is prohibited, by the Constitution, from forming any compact, convention, or alliance, or entering into any negotiation with a foreign Power on the subject of boundary, or any other subject whatever. She can negotiate only through the Government of the United States, and any act constitutionally performed by that Government, in which her interests are affected, she is bound by, as much as if executed by herself. This is the only organ through which her complaints can be heard, and her rights protected in controversies with other nations. The assent of the State was given to the Treaty of 1795, which was entered into by her duly constituted agent, the Government of the United States, on a subject-matter within their legitimate jurisdiction, and, by that, Georgia is constitutionally and morally bound—*nam ille qui facit per alium facit per se*. It would be in vain that powers were given and treaties made, if one individual State had the right of resisting the solemn conventions of the General Government, their own Representatives a component part, without any respect to their having been executed according to all the forms of the Constitution, or to limitations as to time.

The assent of Georgia was not only given to the treaty of 1795, but, upon a recent occasion, in the enactment of a law, in the execution of which this difficulty occurred, it was still more clearly and unequivocally expressed. That law was introduced by a part of the Georgia Delegation, at the instance of the Executive of that State. This act, as introduced by them, and, in the form in which it passed, did not provide for ascertaining the limits between the State and Ter-

ritory, but authorized the President of the United States, in conjunction with the constituted authorities of Georgia, "to cause the line to be run and distinctly marked," and "the line, so to be run and marked, shall be straight from the junction of the Chatahooche and Flint to the point designated as the head of St. Mary's river, by the Commissioners appointed under the 3d article of the treaty of 1795."

It never occurred to that highly respectable Delegation, that it was competent for the United States to do any thing more than to execute the unfinished work of running and marking the line between the two points agreed upon by the two Governments of Spain and the United States; and it appears never to have occurred to the Executive of Georgia, until the work was nearly completed. The bill, as it was introduced by them, was objected to by me, on the ground that it should only provide for running to the head of St. Mary's. It did not occur to me that the journals and proceedings of the Commissioners were to be a part of the treaty itself. Of this, however, I was soon informed by Gov. Forsyth, who referred to that article of the treaty, and convinced not only myself, but the Committee, that the question having been settled by the two nations, it could not now be disturbed. My opposition to the bill, as it came from the Senate, was induced, by having learnt that there was a northern branch of the St. Mary's of greater extent than the one selected by Ellicot and the Spanish Commissioner, which, if ascertained to be the head of the river, would give to Florida as much land above the line as is now claimed by Georgia below it. I was convinced, however, by the arguments of Governor Forsyth, (and few men have greater powers to convince than that gentleman, on all questions requiring learning and talent,) that, however just our claim, it was one that could not be asserted, in consequence of its having been definitively settled by this treaty, which I now plead in bar of further proceeding. The discovery of a southern branch of the St. Mary's has altered the case, but does not alter, in my judgment, the principle on which it should be decided. When this bill came up for consideration, no objection was made to it by the delegation from Georgia, in either House. If they supposed that the question was yet open for discussion, why was the bill permitted to pass confining the operation to the two points agreed upon? I do not know that any limitation has been prescribed to nations or sovereignties, but it does appear to me that Georgia, after all these proceedings, ought not to claim an exemption from their operation, or to avail herself of the common law maxim "*nullum tempus occurrit Regi.*" As I contend that no further legislation is necessary on this subject, I will only refer to a few facts to show the intrinsic difficulties of any further proceedings.

The Commissioner of the United States, a gentleman of practical science and great erudition, who is alike distinguished for his activity, personal industry, and intellectual refinement, declares that the source of the St. Mary's is not only indeterminate, but indeterminable, by any geographical or physical process whatever. I take the liberty to annex two extracts from the letters of that gentleman to me, which place

the subject in such a clear light, and are expressed in so much better language than I can employ, that no remark of mine is necessary on the points to which they relate.

Upon most occasions there is little difficulty in finding the head of a river. The longest branch from its disembogement, or the one which discharges the most water, is not always the head of the river. Names are arbitrary. The Escambia river, which discharges itself into the head of Pensacola Bay, has two branches arising within one hundred miles of its mouth; whilst that of the Coneceuh, which also runs into it, is almost twice as long, discharges the most water, and yet is certainly not the head of the Escambia, which has been known by that name more than half a century. This southern branch of St. Mary's, which has lately been discovered, and sought to be made the boundary of Georgia, has been known, from time immemorial, by a different name, and was no more thought of as the river known by the name of St. Mary's, than the Coneceuh is now of the Escambia. It may discharge ten times the quantity of water, and yet not be the head of St. Mary's, as known at the time the charter was granted to Georgia, or when the treaties of 1783 and 1795 were made. The Northern and what is now called the Middle Branch, near which the mound of Ellicot is erected, were then considered the only branches of what is properly called the St. Mary's; and the general idea which prevailed at the time, was, that Ellicot, the American Commissioner, had obtained the advantage of the Spanish, in fixing the mound near what was, before this new discovery and new name, the Southern Branch of the St. Mary's. If the commission of Sir James Wright, referred to by Governor Forsyth, was not copied by mistake, from the first calling for the Southern branch of the Alatomaha, this middle one was evidently intended. The provincial authorities, in the regulation of their Parish, so considered it; the Board of Trade and Plantations, in England, so thought; and the Commissioners of Georgia, appointed under the authority of the State, so reported. It is known that, at the time the examination was made by the Surveyor of Georgia, it was a season of unparalleled drought, and, at another time, he might have made the same investigation, when all the waters of that vast reservoir composing and in the vicinity of the Okefinoke Swamp, discharging themselves through this middle channel, would have furnished more water in a month than the South Creek did in a year. In a country remarkable for its calcareous combinations, new springs may break out, and branches be formed which did not exist half a century ago.

I have heard it suggested that Ellicot's report was not to be found in the Department of State: it will be observed that the treaty speaks of "*the journal*," of which we have a copy in the Library of Congress; and this objection cannot be urged by Georgia; because it was stated to Col. Randolph, the Commissioner of the United States, at Milledgeville, by the Executive, that the journal was considered authentic there, and would be acted upon as such. This journal was composed after the report was made; and, as a matter of history,

would be considered conclusive, even if it were not made a part of the treaty, after this lapse of time : it would hardly be expected, that, in relation to a fact of such notoriety, it would be required to support it with such technical evidence as a certified copy from Spain, because, by accident or negligence, it has been lost. We might as well demand from Georgia a certified copy of her charter from England at this day. If any evidence of its authenticity were demanded, or corroboration of the general history of the country, it will be found in the ostensibility of the mounds, and the objects and marks described.

In conclusion, I solemnly believe that the United States have as much claim to all the land above what has been called the Florida boundary, west of a line from the sources of the Alatamaha and St. Mary's, to the limit of the first charter, before the annexation by the King's proclamation, than Georgia has to the land now in contest, south of Ellicot's line ; and, if that were added to Florida, we should be a State next year—"a consummation most devoutly to be wished."

I have the honor to be,

With high considerations,

Your most obedient servant,

JOS. M. WHITE.

Extracts of letters from Thomas M. Randolph, Esq., United States' Commissioner, to Jos. M. White, Delegate from Florida.

23D DECEMBER, 1827.

"DEAR SIR: I not only concur fully in opinion with you upon the question of the Georgia claim, but I really think, with gravity, that Georgia might have as reasonably set up a claim when Louisiana was acquired, to the exterior of her territory as far as the Anglo-American Andes, because it reached the Mississippi before. "All the lands lying between the rivers Alatamaha and St. Mary's," to take 50 miles wide over St. Mary's is as unreasonable, in my opinion, as the former would have been. The head of St. Mary's was known as soon as there was a settlement at its mouth : for the Indians of Old Mico and the Micasucky towns, went there to trade very soon after, and were soon followed by great numbers of those residing on the waters running into the gulf ; all of whom turned out where Suwaney runs out of it, and crossed St. Mary's about three miles below Ellicot's Mound, at what is called the Pine Log Crossing Place to this day, because a very tall tree would reach across that place. They were always said to have come by the head of St. Mary's, and that trail is acknowledged to be very ancient. The reconnoitring party sent by Ellicot and Minor, although they passed the mouth of what is called to this day the South Prong, by the people residing near, went directly up the St. Mary's river to look for its head. They had no thought of any other St. Mary's. The Privy Council in England had no

more thought of any other than they had : for it runs parallel, mainly with the Alatamaha, while the South Prong is at right angles to that river, and would have been an indefinite boundary. The Provincial Assembly of Georgia could not have contemplated any other in March, 1765 : for they bound their parish by a due west line from the head of the most southern branch they knew of. Now, from what has been hitherto considered the head, a line, according to Ellicot's calculation, from the north towards the west of $89^{\circ} 17' 22''$, would strike the junction of Flint and Chatahooche ; of course N. 90° W. or due west, would strike lower down the Apalachicola, being more to the left hand in going : how much lower still must a parallel line, or another due west course, starting 50 miles further south, come in contact with that river? The Provincial Assembly could not have made such a mistake ; I am persuaded they did not make it. Spanish creek, at the mouth of which was the Indian trading establishment, called Trader's Hill, was the north branch to them, and the St. Mary's itself the south branch. It would be as reasonable to insist on the head of the Missouri now, in constructing a document of old date calling for the source of the Mississippi, as to shift the name of St. Mary's where it never was before. To those at all acquainted with the theory of rivers, it is well known how illusory the test applied by Mr. McBride is, where they have expansions even sufficient to cause the stagnation, for a time, of most part of their waters, much more where their origin is a great reservoir. But in the supposition that Mr. McBride has determined the section of the channel accurately, and has made a correction for the superior velocity of the middle of the stream on the surface, the basin of the St. Mary's, of one hundred times greater area, perhaps being flat and shallow, while the other is deep, might have afforded less water at that time, and yet, at another, might yield as much in one week as the South Prong in half a year ; and, even if the latter did furnish most, which I am very sure is impossible for the whole year, it would be as unreasonable to call the centre of its lake the head of the St. Mary's, as for the Scots at Glasgow to look for the head of Clyde in the middle of Loch Lomond ; the outlet of which pours into Clyde, perpetually, more, by many times, than all its waters ; for Loch Lomond has a manifold greater space to supply its waters than the Clyde, and the ratio is both inverse, and infinitely greater in the American case."

DECEMBER 26, 1827.

"DEAR SIR : In the hasty letter I had the honor to address you lately, I stated, what I believe you will readily establish upon investigation as an historical fact, that the stream called the St. Mary's by Ellicot, had been known by that name, at its head, for a great length of time before, in consequence of the Indian trading path to St. Mary's, and afterwards to Colerain and Trader's Hill, having always crossed it there.

"The Commissioners of the United States and Spain, in February, 1800, had never heard the name applied to any other : for Ellicot does not speak of such a question having arisen between him and Minor. The outlet of the main lake, unobserved by them, has not even been indicated in their map—so far were they from the idea that the name of St. Mary's was susceptible of being shifted over to one of these lateral branches.

"I will take the liberty now to communicate another fact of a different nature coming under the chorographic head of the subject. Within four miles of the lake which gives rise to the south prong, another lake has been found of somewhat larger surface, but affording less water, out of which flows what is called the west prong. Ellicot appears to have heard of this, but, quitting the river at his observation mound, to run his traverse line to the Beacon Mound, he has not laid it down further than to locate its mouth. Immediately to the east of the south prong there is another branch of the river very much of the same description with the Alligator Swamp, which joins the St. Mary's about two miles below the Beacon Mound ; but the former was reported to me by hunters to be half a mile wide, whilst the latter, which I explored fully myself, is not much over 100 yards at any place where it is two feet deep. These two cannot be called streams, having never yet had current enough to scoop out a channel for themselves. The Alligator was not deeper than three feet just above its mouth, when St. Mary's was nine feet deep, measured with a pole, by myself, immediately above the junction. There is barely a perceptible flow in it, and, moreover, there was no where any clear space of water to be found belonging to it, after several days reconnoitring, crossing and recrossing on horseback, whenever the soundness of its bottom would allow of riding : for the depth of water was no hindrance any where. This must, in 1765, have been considered as one of the outlets of Okefinoke into St. Mary's : for it is, in a manner, blended with the Little Okefinoke, which feeds the St. Mary's at its bend, about six miles from the mouth, where it comes from the southward, and turns to the east. Again, that branch of Suwanny called Santafee was reported by the hunters of the country to head very close to the lake out of which runs the south prong. We have, then, a chorographic fact, that the space on the surface of the earth, which furnishes rain water to supply that lake, out of which the south prong flows, is very narrow indeed, absolutely limited on one side to two miles, and very little more on any other ; while the true St. Mary's has a region of many hundred square miles, from Satilla to Suwanny, tributary to its head only ; and its inundations are great, as Ellicot testifies, although by no means in proportion to such a space. A botanical fact explains that anomaly. All the marshes which supply the true St. Mary's produce, in great quantity, those "*herbal ramosæ palustres*" of the sphagnum genus, which form peat bogs in Scotland and Ireland. The growth is six-fold more luxuriant here than there in height, yet they do not show any thing like the same accumulation of debris as in the case of the peat moss. Those plants furnish a substance insoluble in water, as

is well known. The plain of the St. Mary's has been gradually elevated by that vegetable production; its swamps are now more extensive than they once were, and the loss of water it sustains by evaporation is manifold greater than formerly, in consequence of the manifest encroachment of the sphagnose marshes upon the dry palmetto flats. Whoever reconnoitres on horseback, diligently, will acknowledge this to be the fact, not theory. But it is entirely different in the lakes of that country. The "*herbæ submersæ vado affixæ*," and the "*herbæ aquatiles liberae*" aquis innatantes, are readily soluble in water: for they are little more than a watery, parenchymatous substance, notwithstanding all the wonders of vegetation offered to the view by valemenia and stratiotes, rising to the surface, as in lake Jackson, in places where a ship of the line could float. It is quite probable that the head of St. Mary's is further south from that cause now, than it was in 1765, when the Provincial Assembly thought a due west line from it would strike the mouth of Flint. It seems almost certain that the river receives less water in its channel near the Beacon Mound than it once did. The question, where is the eastern extremity of the line? was probably much easier to settle then, than it is likely to be now. But the provision made in the treaty between Spain and the United States, of October, 1795, was known to Georgia. Ellicot was appointed before that year expired, and his report was not made until May or June, 1800. The General Government, having exclusively the foreign relations, of course made the arrangement with Spain, and Georgia was satisfied with the arbiter during four years continuance of his functions, and with the award for twenty-seven years; nineteen years without any investigation on their part, and nine years after one made through the agency of three of their first citizens, to whose minds the idea of shifting the name of St. Mary's from a stream that had always borne it, to another, did not occur.

"The authorities of Georgia, so far, and so long, too, had ratified the conclusion made with Spain, and Florida being, in equity, completely the successor of Spain, it seems to me that the surveying the lands now, as proposed, would be, in that view, no less arbitrary and violent, than an invasion of the Spanish territory, with the design to take possession, would have been formerly.

"The Government of the United States cannot surrender the territory of a State; but, when the claim of a State to such territory has been disputed, and the dispute settled with the approbation of the State, must that Government be reduced to the necessity of saying to the foreign sovereignty, you must send an armed force yourself to fulfil the award: we have no power to do it; it is a case in which the supreme law of the land cannot be put in execution by our authority?"

